



Hurst (“Hurst”) disclaimed any interest in the attorney’s fees awarded to them, we conclude that we do not have jurisdiction and consequently dismiss this appeal.

### **Facts and Procedural History**

This case involves the tragic circumstances of an injury to the Taylors’ daughter in April of 1999 that left her in a persistent vegetative state. Their daughter fell into the neighbors’ swimming pool and suffered an anoxic brain injury. In 2001 the Taylors sought legal counsel from attorneys Jacobs and Hurst to pursue a claim against their neighbors, Donna and Harold Helms, for damages. In 2002 the case was settled for \$5.3 million, which was the full limit of the Helmses’ insurance policy.

In September 2004, the Taylors filed a complaint against Jacobs and Hurst for not giving them sufficient time to consider how to invest the settlement money, misrepresenting the facts of the proposed annuities with the intent to defraud the Taylors, and suborning perjury. Appellants’ App. pp. 50-57. During the course of discovery, the Taylors served a non-party subpoena duces tecum on Fleet Bank, Robert Fechtman, General Motors Corporation, M-J Insurance Company, Bank One, Stewart-Richardson & Associates, and Locke Reynolds LLP. In three separate motions, Jacobs and Hurst moved to quash these subpoenas, and the trial court subsequently granted all three motions.

On September 6, 2005, the trial court conducted a hearing on Jacobs and Hurst’s request for attorneys’ fees incurred in preparation of the motions to quash. On September 20, 2006, the trial court awarded Jacobs and Hurst \$7,383.75 in attorney’s fees. The Taylors filed a motion to correct error on October 7, 2005, and also a motion to

reconsider on October 10, 2005. The trial court denied both motions, and the Taylors filed a notice of appeal on November 2, 2005.

On May 31, 2006, Jacobs and Hurst filed a notice of intention not to contest the appeal with this court. This notice stated that Jacobs and Hurst relinquished their rights to the attorneys' fees awarded by the trial court. On June 6, 2006, this court ordered the Taylors to show cause why their appeal should not be dismissed. After receiving a response from the Taylors and a reply from Jacobs and Hurst, on September 5, 2006, this court held: "The writing panel for this case should determine which issues are ripe for appellate review. Consequently, the court's order of June 6, 2006, is held in abeyance to be addressed by the writing panel."

### **Discussion and Decision**

It is the duty of this court to determine whether we have jurisdiction over an appeal before proceeding to determine the merits of the issues. Dailey Oil, Inc. v. Jet Star, Inc., 650 N.E.2d 345, 346 (Ind. Ct. App. 1995). An appeal from an interlocutory order is not allowed unless specifically authorized by the Indiana Constitution, statutes, or the rules of court. Bayless v. Bayless, 580 N.E.2d 962, 964 (Ind. Ct. App. 1991), trans. denied. The authorization is to be strictly construed, and any attempt to perfect an appeal without such authorization warrants a dismissal. Anthrop v. Tippecanoe Sch. Corp., 257 Ind. 578, 581, 277 N.E.2d 169, 171 (1972).

Under Indiana Appellate Rule 14 (2007), there are three ways that this court has jurisdiction over interlocutory orders: (1) Rule 14(A) allows interlocutory appeals as a matter of right; (2) Rule 14(B) permits discretionary appeals if the trial court certifies its

order and the court of appeals accepts jurisdiction over the appeal; and, (3) Rule 14(C) authorizes other interlocutory appeals only as provided by statute. The Taylors do not claim statutory authorization to file this interlocutory appeal. Additionally, the trial court did not certify its orders for appellate review. Therefore, we need only consider whether this interlocutory appeal is an appeal of right under Appellate Rule 14(A).

Orders for the payment of money, such as an award of attorney's fees, are taken as a matter of right by filing a notice of appeal with the trial court clerk within thirty days of the entry of the interlocutory order. Ind. Appellate Rule 14(A)(1). In the case at hand, the trial court awarded Jacobs and Hurst more than \$7,000 in attorneys' fees. However, on May 31, 2006, Jacobs and Hurst filed a notice of intention not to contest appeal with this court. The notice stated that "[r]ather than spend the time and incur the costs of briefing the issue on appeal further delaying final resolution of this case, [Jacob and Hurst] have chosen to relinquish their rights to the attorney fees award."

When a defendant disclaims all interests in the property that is the subject of the litigation, no controversy exists for a court to settle. In essence, the plaintiff has won and cannot ask for more. King v. Twin City State Bank, 139 Ind. App. 317, 319, 216 N.E.2d 853, 854 (1966) (holding that when defendant disclaimed any interest in the property subject to litigation, the bank had sole right to the property). When the Taylors originally filed their appeal pursuant to Appellate Rule 14(A)(1), there was still a controversy regarding the award of attorneys' fees. Because Jacobs and Hurst relinquished their claim to the attorneys' fees, there is no longer a case or controversy regarding the

payment of money, and hence we do not have jurisdiction under Appellate Rule 14(A)(1).

The Taylors argue that the trial court improperly granted Jacobs and Hurst's motion to quash their subpoenas. The grant or denial of a motion to quash a subpoena is not appealable by right. Rather, it is an order that may be appealed at the discretion of the trial court and court of appeals. See Airgas Mid-America, Inc. v. Long, 812 N.E.2d 842, 844 (Ind. Ct. App. 2004). For the court of appeals to have jurisdiction to review such an order, the trial court must certify the order for interlocutory appeal before the court of appeals accepts jurisdiction. Ind. Appellate Rule 14(B) (2007). The Taylors sought certification of the interlocutory orders quashing the Taylors' non-party subpoenas, but the trial court denied certification. Appellant's App. p. 8-10.<sup>1</sup> Therefore, we do not have discretionary jurisdiction to review the orders.

Dismissed.

NAJAM, J., and MAY, J., concur.

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<sup>1</sup> The Taylors also contend that the trial court erroneously quashed the Taylors' deposition of William Hurst. However, no attorney's fees were awarded pursuant to that order, and the trial court denied the Taylors' motion for certification of interlocutory order. Consequently, for the same reasons set forth above, we do not have jurisdiction to review that order.